

EXHIBIT B

Bernstein Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	: Case No. 18-23538 (SHL)
Debtors.	: (Jointly Administered)
-----X	

**DECLARATION OF LLOYD BERNSTEIN IN SUPPORT OF REPLY OF THE CHUBB
COMPANIES IN SUPPORT OF MOTION OF THE CHUBB COMPANIES FOR ENTRY
OF AN ORDER (I) RULING THAT DEFAULT JUDGMENT, SETTLEMENT
AGREEMENTS AND STATE COURT ORDERS ARE EACH VOID
AB INITIO PURSUANT TO 11 U.S.C. §§ 105(a) AND 362(a) AND
WITHOUT EFFECT; AND (II) GRANTING RELATED RELIEF**

I, Lloyd Bernstein, declare as follows:

1. I am an attorney admitted to practice law in the State of Washington, and I am a shareholder of the law firm of Bullivant Houser Bailey PC (“Bullivant Houser”).
2. I submit this declaration (the “Declaration”) in support of the *Reply of the Chubb Companies in Support of Motion of the Chubb Companies for Entry of an Order (I) Declaring that Default Judgment, Settlement Agreements and State Court Orders Are Each Void Ab Initio Pursuant to 11 U.S.C. §§ 105(a) and 362(a) and Without Effect; and (II) Granting Related Relief* (the “Reply”).¹ The facts set forth herein are true, of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.
3. On or about October 13, 2021 (the “Retention Date”), ACE American retained Bullivant Houser as ACE American’s defense counsel in the State Court Action.

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Reply and/or the *Motion of the Chubb Companies for Entry of an Order (I) Ruling that Default Judgment, Settlement Agreements and State Court Orders Are Each Void Ab Initio Pursuant to 11 U.S.C. §§ 105(a) and 362(a) and Without Effect; and (II) Granting Related Relief* [ECF No. 10661] (the “Motion”), as applicable.

4. Since the Retention Date, Bullivant Houser has represented and continues to represent ACE American in the State Court Action and in connection with the claims asserted by Plaintiff against ACE American in the Second Amended Complaint.

5. Prior to the Retention Date, on or about August 12, 2021, Plaintiff's counsel and counsel to Mr. Edwin Miguel sent a letter to ACE American (the "IFCA Letter"), which stated that, pursuant to the Insurance Fair Conduct Act, ACE American is requested to "cure" certain actions within 20 days of receipt of the IFCA Letter. The IFCA Letter did not reference or disclose the Default Judgment, the First Settlement Agreement, the Second Settlement Agreement, the Settlement Order, or any documents in connection with any of the foregoing. A true and correct copy of the IFCA Letter is attached hereto as **Exhibit A**.

6. On or about July 29, 2022, in response to ACE American's first request for production, Plaintiff produced and provided to ACE American Plaintiff's first document production ("First Production Response").

7. The First Production Response contained, among other documents and information, copies of the Demand Letter, First Settlement Agreement, Second Settlement Email, and Draft Second Settlement Agreement (collectively, the "Production Documents").

8. On September 16, 2022, I conducted a virtual deposition of Mr. Miguel using Zoom. A true and correct copy of the transcript of Mr. Miguel's deposition is attached hereto as **Exhibit B**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of November 2022, at Portland, Oregon.

/s/ Lloyd Bernstein

LLOYD BERNSTEIN

EXHIBIT A

IFCA Letter

LAW OFFICES OF TERENCE F. TRAVERSO, P.S.

1408 140TH PLACE NORTHEAST, SUITE 140
BELLEVUE, WASHINGTON 98007
PHONE: (425) 453-0115
FAX: (425) 412-4060

August 12, 2021

Ace American Insurance Company
436 Walnut Street
P.O. Box 1000
Philadelphia, Pennsylvania 19106

Re:	Claimant:	Shelley Hawkins
	Your insured:	Edwin Miguel
	Account:	A&E Factory Service, LLC
	Your claim no.:	A161120 5013-0004
	Loss date:	11/16/16

To Whom It Concerns:

Attached at page 2 of this letter is a notice and signature page.

Thank you for your anticipated cooperation.

Very truly yours,

s/Terence Traverso

Terence F. Traverso

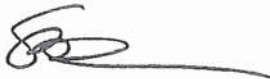
TFT:dz
cc: client

Pursuant to the Insurance Fair Conduct Act your company is respectfully requested to cure all of the following within 20 days of receipt of this letter:

- Comply with duties under the contract and applicable law.
- Conduct a reasonable investigation.
- Attempt in good faith to effectuate fair and equitable settlements of the claims.
- Pay the reasonable amount of damages and other amounts caused.
- Adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- Comply with all insurance regulations.
- Refrain from compelling your insured to submit to litigation by offering substantially less than the amounts ultimately recovered in such actions or proceedings.

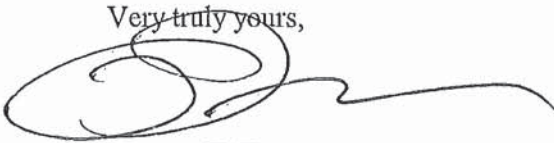
Thank you for your courtesies.

Very truly yours,



Sean B. Malcolm
Attorney for Edwin Miguel

Very truly yours,



Terence F. Traverso
Attorney for Shelley Hawkins

Ace American Insurance Company
August 12, 2021
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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that I caused a copy of this document to be served upon the following:

Ace American Insurance Company
436 Walnut Street
P.O. Box 1000
Philadelphia, Pennsylvania 19106

Insurance Fair Conduct Act
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504

by sending to the foregoing by First Class U.S. Mail a true copy thereof, placed in a sealed envelope addressed as listed above and deposited at Bellevue, Washington on the date below, and that postage thereon was fully prepaid.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 12th day of August, 2021, at Bellevue, Washington.

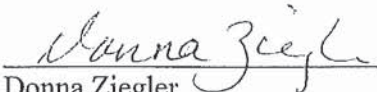

Donna Ziegler

EXHIBIT B

Miguel Deposition Transcript

1 SUPERIOR COURT OF WASHINGTON, SNOHOMISH COUNTY

2
3 SHELLEY S. HAWKINS,)
4 individually and as)
5 assignee of Edwin G.)
6 Miguel,)
7 Plaintiff,) No. 18-2-08480-31
8 vs.)
9 ACE AMERICAN INSURANCE)
10 COMPANY, a foreign)
11 insurer; EDWIN G. MIGUEL;)
12 FATEMAH S. ALSUWAIDAN; and)
13 DOES AND DOE INSURANCE)
14 COMPANIES 1-5,)
15 Defendants.)

16
17 DEPOSITION UPON ORAL EXAMINATION OF

18 EDWIN MIGUEL

19 VIA ZOOM

20
21 3:00 P.M., SEPTEMBER 16, 2022

22 WITNESS LOCATED IN: REDMOND, WASHINGTON

23
24 REPORTED BY: BETSY E. DECATER, RPR, CCR 3109
25

Page 1

1 A P P E A R A N C E S

2
3 FOR THE PLAINTIFF:

4 TERRENCE F. TRAVERSO
5 Law Offices of Terence F. Traverso, P.S.
6 1408 140th Place NE
Suite 140
Bellevue, Washington 98007
(425) 453-0115
7 assistant1@traversolaw.com
8

9 FOR THE DEFENDANT:

10 SEAN B. MALCOLM
11 Malcolm Law Firm PLLC
8201 164th Avenue NE
Suite 200
12 Redmond, Washington 98052-7615
(206) 659-9514
13 sean@kirklandtriallawyer.com
14

15 ON BEHALF OF ACE AMERICAN INSURANCE:

16 LLOYD BERNSTEIN
17 Bullivant Houser Bailey PC
One SW Columbia Street
Suite 800
18 Portland, Oregon 97204-4022
(503) 228-6351
19 lloyd.bernstein@bullivant.com
20
21
22
23
24
25

Page 2

I N D E X

EXAMINATION BY: PAGE(S)
MR. BERNSTEIN 4

EXHIBITS FOR IDENTIFICATION PAGE

Exhibit 1	Letter - 8/26/20	
	Traverso to Miguel	20
Exhibit 2	Settlement Agreement	
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REDMOND, WASHINGTON; SEPTEMBER 16, 2022

3:00 P.M.

--oOo--

EDWIN MIGUEL,
sworn as a witness by the Certified Court Reporter,
testified as follows:

EXAMINATION

BY MR. BERNSTEIN:

Q. Good afternoon, Mr. Miguel. My name is Lloyd
Bernstein. I represent ACE Insurance in a lawsuit that
is being brought by Ms. Hawkins with respect to a motor
vehicle accident that you were involved in wherein you
later assigned your rights against my client to Ms.
Hawkins. Do you understand that?

A. Yes.

Q. You have your attorney sitting next to you?

A. Yes.

Q. Before we get started with the deposition, just a
couple of ground rules to go through. Have you ever
been deposed before?

A. No, sir. Don't mind me, I'm kind of nervous
here.

Q. Completely understand. So I'll go slow and at

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1 least I'll lay out the rules from my perspective and we
2 can kind of go from there. So this is my opportunity to
3 ask you questions about this lawsuit. Do you understand
4 that?

5 A. Yeah.

6 Q. I'm the attorney for ACE Insurance in this
7 matter. You have your attorney there. If at any time
8 you need to take a break, you just let us know. I would
9 ask that you answer any question that's pending and then
10 we can take a break for whatever reason you need. Okay?

11 A. Okay.

12 Q. You got to remember to keep giving verbal
13 responses. Head shakes, nods, while you and I and
14 everybody on the Brady Bunch Zoom here will see it, the
15 court reporter needs a verbal response to put down on
16 the record. You understand that?

17 A. Yes.

18 Q. The questions that I ask and the answers that you
19 give, the court reporter's typing that and is making a
20 transcript that you'll have an opportunity to review.
21 So let's try not to talk over each other. Try to speak
22 up. And then if you have any questions, you just let us
23 know. Okay?

24 A. Yes.

25 Q. If I ask you a question that you don't

Page 5

1 understand, just tell me. Okay?

2 A. Yes.

3 Q. To prepare for your deposition today, did you
4 review any documents?

5 A. I did.

6 Q. What did you review?

7 A. I reviewed the documents that I have signed here.

8 Q. And when you say documents you have signed, is
9 that the settlement agreements?

10 A. Yes.

11 Q. Did you review any other documents in preparation
12 for today's deposition?

13 A. Whatever I have in front of me is what I got.

14 Q. So the four exhibits that your attorney printed
15 out for you prior to the proceeding today?

16 A. Yes.

17 Q. Other than those four documents, you didn't
18 review anything else?

19 A. No.

20 Q. Other than speaking with Mr. Malcolm, did you
21 speak with anybody else to prepare for today?

22 A. No.

23 Q. If you could, sir, will you please tell me where
24 you currently reside?

25 A. I reside 17805 29th Drive SE, Bothell, Washington

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1 96 -- I mean, 9801 -- sorry, 98012.

2 Q. How long have you resided at that address?

3 A. Since 2017, so -- yeah.

4 Q. And you own that home?

5 A. No, sir. I rent.

6 Q. Are you currently married?

7 A. No.

8 Q. Do you have any kids?

9 A. Yes.

10 Q. Can you briefly give me your education starting
11 with high school and anything post high school?

12 A. High school I went in Hawaii. I'm originally
13 from Hawaii, went to Pahoia High School, graduated 1990.
14 Then after high school I went straight to trade school,
15 to Universal Technical Institute, to study hands on with
16 refrigeration and air-conditioning technology. Then
17 that's -- that's the schools that I went to.

18 Q. When did you first move to Washington?

19 A. When I moved to Washington, that was in 2012 of
20 July. And before then after high -- after tech school,
21 I moved back to Hawaii and then started working for
22 Sears since 1992. Then I transferred to Washington to
23 work with Sears, which is Sears, Inc.

24 Q. And that was 2012?

25 A. Yes, sir.

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1 Q. I understand you're no longer currently employed
2 with Sears; is that correct?

3 A. That's correct.

4 Q. When did your employment with Sears end?

5 A. 2019 of April, the ending part of April.

6 Q. In your last role with Sears, what did you do for
7 them? What was your job?

8 A. I did the same thing as I always did in Hawaii is
9 repair technician. I go house to house, I drive to
10 customer's home and repair their appliances.

11 MR. MALCOLM: Could we just take a 30 second
12 break here? I just want to get him some water.

13 (Recess taken.)

14 Q. (BY MR. BERNSTEIN) I believe you said you're
15 currently not married. Have you been previously
16 married?

17 A. No, sir.

18 Q. How many kids do you have?

19 A. I have one originally from a previous one and
20 then three with the one I'm with now.

21 Q. And the woman that you're with now, does she
22 reside with you?

23 A. Yes, sir.

24 Q. And how long have you been with her?

25 A. Going on 14 years.

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1 Q. What's her name?

2 A. Sasha King.

3 Q. What was your job title at Sears before you left?

4 A. I was a service technician.

5 Q. Where are you currently employed?

6 A. Electrolux Branded Service.

7 Q. Can you say the name again?

8 A. Electrolux Branded Service. So it's an appliance
9 place too. I repair appliances but basically Electrolux
10 Frigidaire brand.

11 Q. And could you spell the name of your employer for
12 the court reporter, please.

13 A. Electrolux, E-L-E-C-T-R-O-L-U-X.

14 Q. Thank you. Do you have a job title there?

15 A. Also in-home technician and repair appliances.

16 Q. Any other employment currently?

17 A. No, just that.

18 Q. And what prompted the change from Sears to the
19 new place?

20 A. Well, difference from work and going to newer
21 career in the area, better benefits, better team, less
22 stress. Working with Sears is a lot of stress from
23 since the -- because we deal with, you know, different
24 appliances, going into homes and different appliances.
25 Here, Electrolux, I only repair our name brand

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1 Electrolux and Frigidaire and nothing else. So less
2 stress.

3 Q. And so the stress was the result of just having a
4 whole host of different types of appliances that you had
5 to know to provide repairs?

6 A. Yes.

7 Q. What are your hours for a typical day while you
8 were at Sears?

9 A. Oh, boy. That's another thing. So it was from
10 8:00 to even sometimes till late, late at night. So I
11 would work 12 hours or 13 hours sometimes a day.

12 Q. And I understand at the time of the motor vehicle
13 accident we'll talk about here shortly, you were driving
14 a Sears van. Was that a regulation van?

15 A. Yes.

16 Q. You had the same van?

17 A. Yes. That we would drive to -- to the mall and
18 hop into van. So we wouldn't take it home. We would
19 always leave it there at the base -- well, we call it
20 base -- which is the mall parking lot.

21 Q. But you would grab the same van each time each
22 day?

23 A. Yes, sir, which was assigned to me.

24 Q. Typically just one person in the van, or how many
25 technicians in the van?

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1 A. Only one.

2 Q. I want to talk about the motor vehicle accident
3 of November 16, 2016. I recognize it's been some time
4 and so I want to go through with you, give me your best
5 recollection. At the time of that accident, you were
6 working for Sears; is that correct?

7 A. Yes, sir.

8 Q. And where were you coming from and where were you
9 going to?

10 A. I was heading to another home to do a repair.
11 This was late afternoon, I guess, already, running kind
12 of late. So I was on the freeway on I-5 heading
13 northbound, I believe, at that time, yeah.

14 Q. And why don't you give me your best recollection
15 of how the accident occurred?

16 A. Again, I was, you know, working late, rushing,
17 that was rush hour traffic heading northbound to my next
18 call. And I just was switching lane -- you know, coming
19 out from, I guess if I remember, probably coming out
20 from a gas station from the off ramp and then getting
21 onto I-5. Then all of a sudden, you know, I switch lane
22 by looking towards my left, and then off all of a sudden
23 boom, I hit a red Jeep and I presume another car in
24 front of us -- in front of the red Jeep also. So three
25 cars. But the red Jeep just stopped instantly right in

Page 11

1 front of me while I was changing -- while I was looking
2 towards my left to switch lanes.

3 Q. Did you see brake lights prior to making impact
4 with the rear of the red Jeep?

5 A. Yes.

6 Q. How fast would you estimate you were going at the
7 time of the impact?

8 A. That time was traffic -- I don't know, actually,
9 how fast I was going.

10 Q. Do you have an estimate?

11 A. I would say, because I was coming out from there
12 and there was traffic, so 45, 50. It was busy.

13 Q. And you said you saw the brake lights. Was it
14 instantaneous brake lights, hit your brakes, impact, or
15 was there some time between the lights and you getting
16 on your brakes prior to impact?

17 A. It happened so fast that I don't recall. So I --
18 it just happened and I braked instantly.

19 Q. And I understand from the police report you
20 impacted the rear of the red Jeep, correct?

21 A. Yes, which was tourist. They also came out and
22 asked me while I was already in shock if I was all
23 right. So they were fine, I presume.

24 Q. And then is it your understanding that the car
25 that you hit, I guess it's a Ford Edge, I'm looking at

Page 12

1 the --

2 A. I don't know. Yeah. Sorry.

3 Q. I apologize. Were you aware at the time that the
4 vehicle you rear-ended then hit the vehicle in front of
5 it, Ms. Hawkins?

6 A. At that time I don't know. Because I didn't even
7 get out from my van. I was in shock. I know I hit the
8 red van, but then there was another car in front.

9 Q. At any point after the accident, did you get out
10 to assess the scene?

11 A. Just my van and the one in front of me.

12 Q. Did you look at the car in front the van -- the
13 car in front of you that was also involved in the
14 accident?

15 A. At that time I seen it but not -- not as much as
16 I looked at the one that I hit the worst.

17 Q. How would you describe the damage to the vehicle
18 you struck from the rear?

19 MR. TRAVERSO: Objection; foundation;
20 speculation.

21 MR. MALCOLM: That's okay.

22 A. I don't know I was supposed to answer. The
23 damage with that was pretty smashed on the back door,
24 the hatch. So it was caved in. And my van was caved in
25 a little bit, I believe I remember. I'm sorry, it was

Page 13

1 back, you know, 2016. That's long.

2 Q. (MR. BERNSTEIN) Airbags in the van, do you know
3 if there were airbags in the van?

4 A. They did not deploy and I believe, if I recall, I
5 don't think so the Jeep or Edge didn't deploy at all
6 too. So they probably hit their brakes enough and
7 rolled or something.

8 MR. TRAVERSO: Object and move to strike the last
9 part as lack of knowledge and speculation. I should
10 clarify, lack of personal knowledge.

11 Q. (BY MR. BERNSTEIN) So at some point you got out
12 of your van after the accident?

13 A. Yes, after the accident.

14 Q. You looked at the car or the vehicle in front of
15 you that you struck, correct?

16 A. Yes.

17 Q. Did you look at Ms. Hawkins' vehicle, the vehicle
18 in front of the car that you struck?

19 A. No.

20 MS. TRAVERSO: Objection; asked and answered.

21 A. I don't recall or anything. But the one I was
22 concerned is the one that I hit.

23 Q. (BY MR. BERNSTEIN) Did you speak with the driver
24 of the car that you hit?

25 A. Yeah, they approached me. I was in the van, they

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1 came out of their car and say are you all right. And I
2 said, at this point, no, I'm shocked.

3 Q. Did you get medical attention at the scene?

4 A. No.

5 Q. Do you know if any of the people involved in the
6 accident got medical attention at the scene?

7 A. No, because there were no ambulances, State
8 Patrol.

9 Q. At any point while at the accident scene, did you
10 speak with Ms. Hawkins, the driver of the vehicle in the
11 front of the accident?

12 A. No.

13 Q. At some point in time did the police come on the
14 scene?

15 A. Yes.

16 Q. You spoke with the police about the accident?

17 A. Yes. I told them briefly what happened and
18 exchanged -- I gave them the insurance card,
19 registration, whatever they needed, and my license.

20 Q. The insurance information you provided the
21 police, was that your own personal insurance or was that
22 insurance provided to you through Sears?

23 A. I believe that was through Sears. It's not my
24 personal. It's whatever that was in with the van, that
25 we had in the van.

Page 15

1 Q. The folks in the vehicle that you struck from
2 behind, did they appear to be injured to you in any way?

3 MR. TRAVERSO: Objection; speculation;
4 foundation.

5 A. No.

6 Q. (BY MR. BERNSTEIN) No blood or cuts or anything
7 like that?

8 A. No, not that I know of.

9 Q. Okay. Did they tell you when you spoke with them
10 that they thought they were injured in any way?

11 A. Not -- no, because they came to check up on me.

12 Q. Do you know if the folks in the vehicle that you
13 struck went and talked with Ms. Hawkins, the driver of
14 the vehicle in front of them?

15 A. I don't recall. Like what I said, I was in my
16 van shocked.

17 Q. Other than talking to the police at the scene,
18 did you have any follow-up conversations with the police
19 relative to this accident?

20 A. Only when he gave me the paperwork of exchanging
21 of people who were involved, that's it. And then from
22 there he asked to call a tow truck for me because we
23 were in the middle of the road -- I mean, freeway.

24 Q. So that discussion with the police officer about
25 exchanging information and the tow truck was still at

Page 16

1 the scene?

2 A. Yes.

3 Q. Any follow up with the police officer or any
4 police officers after that, after leaving the scene
5 about the accident?

6 A. No. I had -- I have reported already when I got
7 into an accident to my supervisor, told him that I got
8 into an accident. So they knew.

9 Q. And, I'm sorry, maybe I'm not making myself
10 clear. I'm just wondering if you had any follow up with
11 the police after the accident, after leaving the scene?

12 A. No, nothing.

13 Q. Who was your supervisor at Sears at the time of
14 the accident?

15 A. I had several. The supervisors at that time, one
16 was Kumar, I believe, I'm not sure, his first name was
17 and then after that was Brad Clever.

18 Q. Do you recall which of your supervisors you
19 reported the accident to?

20 A. Yes. I did report it to them and told them what
21 happened.

22 Q. Was it Kumar or was it Brad Clever?

23 A. At that time it was Kumar.

24 Q. Did you call him from the scene, the accident
25 scene?

Page 17

1 A. Yes, sir. And then protocol for us was to get
2 checked at the doctors and, you know, do a pee test the
3 day after.

4 Q. Did you get checked at the doctors?

5 A. Yes, sir.

6 Q. And what do you recall the doctor telling you at
7 that visit?

8 A. Nothing, because all I had to do was just give
9 them my pee.

10 Q. And I assume the urine was for a drug test?

11 A. Yes.

12 Q. Came back negative?

13 A. I believe so.

14 MR. TRAVERSO: That's personal health
15 information, Counsel, that's not at issue in this
16 lawsuit.

17 Q. (BY MR. BERNSTEIN) And no further medical
18 treatment relative to the motor vehicle accident?

19 A. No.

20 Q. Did Sears have you fill out any paperwork for the
21 accident?

22 A. I believe so, if I -- I don't remember if it was
23 -- it's been a while.

24 Q. Sure. So you believe they have, you just don't
25 recall exactly what it was. Is that a fair statement?

Page 18

1 A. Yeah. Because I know I had to go to the doctors
2 and give them my urine. So I actually gave them a
3 report of what happened, so they know actually what was,
4 you know, the accident.

5 Q. Did Sears require that you fill out any paperwork
6 sort of describing how the accident occurred, what
7 happened, those types of things?

8 A. Yeah, yeah, I did that because they have like a
9 pre check on accidents report, so then that way we can
10 give it to the employer, which I did.

11 Q. And so whatever this form was, you filled it out
12 and you gave it to who at Sears?

13 A. Kumar. I gave it to Kumar at that time.

14 Q. After providing this form to Kumar and reporting
15 the accident the day of, any follow-up conversations
16 with your supervisors about the accident itself?

17 A. Nothing at all.

18 Q. Did you ever check in with them to see if they
19 needed any additional information from you about the
20 accident?

21 A. No. I believe they would have called me
22 immediately if they needed more information.

23 Q. At some point in time you got served with a
24 lawsuit from Ms. Hawkins in 2018, correct?

25 A. Yes.

Page 19

1 Q. From the time of reporting the accident to Sears
2 until you got served with a lawsuit, had you had
3 conversations with anybody at Sears about the accident?

4 A. Yes, I did. I did give them the subpoena, the
5 lawsuit, to my supervisor at that time Brad Clever.

6 Q. But prior to giving them the subpoena and the
7 lawsuit after initially reporting the accident, in that
8 window had you had any conversations with either of your
9 supervisors about the accident?

10 A. No.

11 Q. Did they require you to fill out any additional
12 information?

13 A. No.

14 Q. Were you ever contacted by anyone from Sears
15 insurance, the insurance company about the accident?

16 A. Never, none.

17 Q. What I'd like to do is mark as Exhibit 1 there's
18 an August 26th, 2020 letter.

19 MR. BERNSTEIN: Mr. Malcolm, if you can give that
20 to your client or I can share it on the screen real
21 quick so we're all on the same page.

22 MR. MALCOLM: He has it.

23 (Deposition Exhibit No. 1 was marked for
24 identification.)

25 Q. (BY MR. BERNSTEIN) Can you see the letter on the

Page 20

1 screen?

2 A. Yes, sir. I have it in front of me also.

3 Q. Okay. We'll mark this as Exhibit 1. This is an
4 August 26, 2020 letter from Mr. Traverso to yourself.
5 Is this the first notice you got of the lawsuit against
6 you by Ms. Hawkins?

7 A. Yes.

8 Q. And is this -- when you talk about the subpoena
9 and the suit, is this how you received it with this
10 letter?

11 A. Yes. I was shocked with this.

12 Q. Why were you shocked?

13 A. Because being that I got involved with the
14 accident like this and I get somebody here coming after
15 me when I work for a big company at the time and, you
16 know, I was by myself. It was like looking at this here
17 with dollar signs here, where the hell am I going to get
18 this? I mean, nobody had, you know, represent me or
19 even tell me about this until I get subpoena. And, you
20 know, even right now just looking at it, I'm just
21 stressed out. Because I remember back then when I seen
22 this is like how I'm going to, you know, pay this when I
23 don't even have it.

24 Q. When you received this, did you go and speak to
25 an attorney?

Page 21

1 A. No. I -- I just was lost right there.

2 Q. Did you bring this documentation to your
3 supervisor at Sears?

4 A. I don't know because I probably did bring it up,
5 but I don't remember showing it. But --

6 Q. So let me see if I can understand. You got this
7 letter with the subpoena and the lawsuit, correct?

8 A. Yes.

9 Q. At some point in time, did you give Sears any of
10 this documentation?

11 A. I don't know. I probably did.

12 Q. Do you recall who that would have been, whether
13 it was either Kumar or Brad?

14 A. It would have been Brad, if anything, because,
15 like -- like I would have argued this and said, you
16 know, why somebody helping me out on this?

17 MR. TRAVERSO: Mr. Bernstein, you understand
18 you're showing him the wrong letter?

19 MR. BERNSTEIN: I'm showing him a letter of
20 August 26, 2020.

21 MR. TRAVERSO: It's not the document with the
22 lawsuit. This is not the letter that contained the 2018
23 summons and complaint. This is the letter from 2020.

24 MR. BERNSTEIN: Got it. Thank you. Thank you,
25 Mr. Traverso.

Page 22

1 Q. (BY MR. BERNSTEIN) In 2018 -- let me just kind
2 of back it up and unwind it.

3 At some point in time, you were served with a
4 copy of the lawsuit Ms. Hawkins had started, correct?

5 A. Yes.

6 Q. And that's what you would have given to Sears at
7 the time?

8 A. Yeah. If anything, it was pertaining to this,
9 yeah, it would have been something that I've handed over
10 to them because it was an accident that happened and
11 thinking, you know, I don't know what to do. Like I
12 said, I was shocked with this and nervous about these
13 numbers that I don't have.

14 Q. Separate from the numbers from Exhibit 1, let's
15 not focus on Exhibit 1 at the moment --

16 MR. MALCOLM: Well, maybe can you take it off the
17 screen, then, because it's a little confusing.

18 MR. BERNSTEIN: Got it.

19 Q. (BY MR. BERNSTEIN) When you were first given
20 papers about the lawsuit Ms. Hawkins commenced against
21 you and you provided it to Brad at Sears --

22 A. Yes.

23 Q. -- do you recall having conversation with Brad as
24 to what would be the next step?

25 A. Not that I know of. I just handed it over, and

Page 23

1 then I presumed that they would hand it over to the --
2 his supervisor or HR or whoever handles these accidents.
3 I really don't know how they, you know, do these things.

4 Q. So when you handed over the suit to Brad, did he
5 give you any instructions on things that you should do?

6 A. No.

7 Q. And at that time, did you seek to retain an
8 attorney to assist you?

9 A. At that time I was still -- I was lost, I was
10 totally lost and like, again, I mean, nobody is there
11 for me when I've -- I'm left with that.

12 Q. So after you handed the paperwork off -- and I'll
13 put Exhibit 1 back on. Between the time of handing the
14 notice of the lawsuit off to Sears and getting this
15 letter from Mr. Traverso, had you had any other
16 conversations with Brad or anyone at Sears?

17 A. No.

18 Q. Had you spoken about the lawsuit with anyone
19 prior to receiving this August 26, 2020 letter?

20 A. No. Just to my supervisor, that's it.

21 Q. And after handing off the lawsuit to your
22 supervisor, were there any follow-up conversations with
23 him about the status of the lawsuit, what was happening?

24 A. No. All I did was just hand it to them and
25 supposedly they would take care of it because I work

Page 24

1 under Sears and they were my supervisors, and if
2 anything else came up they would have to, you know, get
3 in touch with me. But this was more likely about me.

4 Q. Okay. And just trying to put the sequence in
5 line here, prior to receiving Exhibit 1, the August 26,
6 2020 letter, you had already left Sears, correct?

7 A. Yes.

8 Q. When you departed Sears, did you have any
9 conversations with anybody about what was happening with
10 the lawsuit or what you needed to do now that you were
11 leaving Sears?

12 A. No. You mean talk to anybody?

13 Q. Anybody at Sears --

14 A. Oh, no.

15 Q. When you were a party in 2019, any conversations
16 with anybody at Sears, your supervisors or otherwise
17 about what's happening with the lawsuit Ms. Hawkins
18 commenced and if there was anything you needed to do?

19 A. No.

20 Q. When you received this August 26, 2020 letter
21 from Mr. Traverso, did you take this to Sears?

22 A. I don't remember. Maybe I did. But, again -- I
23 take that back. This was in 2020, so I wasn't with
24 Sears anymore. I brought it up to the manager being
25 that I still had the phone number.

Page 25

1 Q. That would have been Kumar or Brad?

2 A. Well, at that time I remember -- it wasn't with
3 Kumar at that time because I had a new supervisor, which
4 was Brad already. And at that time I remember somebody
5 tried getting me back to Sears, which was the district
6 manager, and that was Aaron Barber. And he was just
7 trying to get me back. So I ask him about this, and he
8 said that it was out of his hands, that's it.

9 Q. So when you received Exhibit 1, did you provide
10 Mr. -- was it Aaron Barber, is that the name?

11 A. No, I did not provide him anything because he
12 called me to try and hire me back.

13 Q. So let me break this down. When you received
14 Exhibit 1, did you make any contact with Sears to ask
15 them what was going on?

16 A. No.

17 Q. At some point in time Mr. Barber contacted you
18 about coming back to Sears. Do you know when that was
19 relative to the date of Exhibit 1?

20 A. I don't know off -- it was a while back, so I
21 can't recall.

22 Q. When you got Exhibit 1, did you call Mr.
23 Traverso?

24 A. Yes.

25 Q. Do you know when that would have been relative to

Page 26

1 receiving Exhibit 1? A day? A week?

2 A. I don't know when. But as I read this, then,
3 yeah, I called. Because I didn't know where I'm going
4 to get the money to pay all this, so I called him.

5 Q. Exhibit 1 references a judgment in the amount of
6 \$440,827. Do you see that?

7 A. Yes.

8 Q. Did you ask him for a copy of that judgment?

9 A. I don't remember.

10 Q. In your conversation with Mr. Traverso, did he
11 state to you that if you didn't agree to what he was
12 proposing in his letter that he would try to pursue and
13 enforce a judgment against you?

14 A. That's what this paper says, yes.

15 Q. Okay. But I'm asking you in your conversation
16 with him, did he convey that to you in the conversation?

17 A. Yeah.

18 Q. When you spoke with Mr. Traverso, did he suggest
19 that you get a lawyer before speaking with him?

20 A. Yes.

21 Q. And did you get a lawyer before you spoke with
22 Mr. Traverso on the phone in response to Exhibit 1?

23 A. That's when I got to, yeah, to Sean.

24 Q. But I'm asking you if you got to Sean before you
25 had the conversation with Mr. Traverso?

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1 A. Can you repeat that again?

2 Q. Sure. Mr. Traverso told you on the phone
3 conversation that you had with him after you received
4 Exhibit 1 that you may want to get a lawyer, correct?

5 A. Yes.

6 Q. At that point did you stop speaking with Mr.
7 Traverso, get a lawyer and then call him back?

8 A. At that time when he said, you know, I can get a
9 lawyer and then he -- I can talk to him, so from there
10 is when I got Sean.

11 Q. Okay. So prior to getting Sean, you had a
12 conversation with Mr. Traverso; is that correct? I'm
13 understanding you correct?

14 A. Pertaining to this letter, yes, I called him.

15 Q. And did Mr. Traverso ever suggest to you that
16 the -- that you take this letter and the default
17 judgment in the 440,000 to Sears and ask them for help?

18 A. I can't recall. I don't remember him saying that
19 or anything. All I know was this was me. Nobody was
20 helping me, and I was already -- I already left Sears at
21 that time, so...

22 Q. Yeah. So I'm just asking you if that was a
23 suggestion made by Mr. Traverso at the time of the
24 conversation?

25 A. To seek a lawyer?

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1 Q. No; to take the letter and the default judgment
2 to Sears.

3 MR. MALCOLM: Objection; asked and answered.

4 A. I don't remember him saying or anything.

5 Q. (BY MR. BERNSTEIN) Did you discuss with him why
6 he wanted you to bring the financial paperwork
7 referenced in Exhibit 1?

8 A. I don't remember.

9 Q. The letter goes on to say that "I can free you
10 from this judgment and subpoena, however," and then he
11 suggests that you give him a call but that you not
12 contact your insurance company. Do you see that?

13 MR. TRAVERSO: Objection; argumentative. The
14 document speaks for itself.

15 MR. BERNSTEIN: I'm asking him if he sees it.

16 A. Yeah, I see it.

17 MR. TRAVERSO: Same objection.

18 Q. (BY MR. BERNSTEIN) And when you called Mr.
19 Traverso, did you ask him why you shouldn't call your
20 insurance company?

21 A. I did not ask -- I don't remember asking him
22 that. It just was pertaining, again, to this letter. I
23 don't know because I was -- you know, again, I'm
24 shocked. Today I'm shocked.

25 Q. And did you discuss at all why he suggests -- Mr.

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1 Traverso suggests in his letter if you do discuss it
2 with your insurance company that he won't work with you
3 to get out from under this judgment?

4 MR. TRAVERSO: Objection; misstates the document.

5 A. I don't remember.

6 Q. (BY MR. BERNSTEIN) Did you ever appear at his
7 office as the letter requests?

8 A. No. I spoke to him over the phone.

9 Q. Was it just the one phone conference?

10 A. I don't remember, one or two.

11 Q. Did Mr. Traverso ever discuss with you that if
12 you didn't pay the judgment and work with him that you
13 could end up in bankruptcy?

14 MR. TRAVERSO: Objection; assumes facts not in
15 evidence.

16 MR. BERNSTEIN: I am asking him if he ever had
17 that conversation.

18 A. No. I just couldn't think of how I would pay
19 this.

20 Q. (BY MR. BERNSTEIN) After working -- or
21 discussing the letter with Mr. Traverso, did you -- when
22 did he recommend to you that you call or get in touch
23 with Mr. Malcolm?

24 MR. TRAVERSO: Objection; misstates the
25 testimony; assumes facts not in evidence.

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1 MR. MALCOLM: Object to the form.

2 Q. (MR. BERNSTEIN) Let me try it again.

3 When did Mr. Traverso recommend that you call Mr.
4 Malcolm?

5 MR. TRAVERSO: Objection; misstates the testimony
6 and assumes facts not in evidence.

7 Q. (BY MR. BERNSTEIN) Did I understand your
8 testimony that Mr. Traverso recommended Mr. Malcolm to
9 you?

10 MR. TRAVERSO: Objection; there's been no
11 testimony from the witness to that effect. It misstates
12 the testimony and assumes facts not in evidence and it's
13 leading.

14 MR. MALCOLM: Object to the form.

15 Q. (BY MR. BERNSTEIN) Did I understand your
16 testimony correctly?

17 MR. TRAVERSO: Same objections.

18 MR. MALCOLM: Object to the form.

19 Q. (BY MR. BERNSTEIN) You can answer it.

20 MR. TRAVERSO: And it's argumentative.

21 MR. MALCOLM: If you understand.

22 A. No, I'm lost.

23 Q. (BY MR. BERNSTEIN) Okay. Fair enough. Let me
24 try it again. Who recommended Mr. Malcolm to you?

25 MR. TRAVERSO: Objection; argumentative; and

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1 misstates the witness's testimony and assumes facts not
2 in evidence.

3 MR. BERNSTEIN: It doesn't misstate anything.
4 I'm asking him who recommended.

5 MR. TRAVERSO: The witness has never testified
6 that anybody recommended Mr. Malcolm. He never
7 testified that I recommended Mr. Malcolm. You're being
8 argumentative and putting your own words in the
9 witness's mouth, or attempting to, Mr. Bernstein.
10 That's why I'm objecting is it assumes facts not in
11 evidence, it's argumentative and it mischaracterizes
12 what the witness did testify to.

13 Q. (BY MR. BERNSTEIN) Did Mr. Traverso recommend
14 Mr. Malcolm as an attorney you could seek to assist you
15 in response to the lawsuit?

16 MR. TRAVERSO: Objection; vague.

17 A. To seek to know more about this, yes.

18 Q. (BY MR. BERNSTEIN) So Mr. Malcolm was
19 recommended to you by Mr. Traverso; is that correct?

20 MR. TRAVERSO: Objection; vague.

21 MR. MALCOLM: Object to the form.

22 A. I'm supposed to answer that?

23 Q. (BY MR. BERNSTEIN) Yes.

24 A. So I -- I needed somebody to represent me, so
25 that's who I got was Sean.

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1 Q. I understand. How did you get Sean's name?

2 A. He called me.

3 Q. Sean called you?

4 A. Yes.

5 Q. Did Mr. Traverso ever suggest that you call Sean?

6 A. He -- he recommended probably but not -- not a
7 name until I got a call, but to seek for a lawyer, an
8 attorney, because he can't help me.

9 Q. I understand that. But in your conversation with
10 Mr. Traverso, did he suggest to you that Mr. Malcolm
11 could be a lawyer you could call or seek counsel from in
12 response to the lawsuit?

13 A. Yes.

14 Q. And did you call Mr. Malcolm or Mr. Malcolm call
15 you, the first contact?

16 A. I don't remember either -- I think he called me.

17 Q. So Mr. Traverso recommended Mr. Malcolm or as a
18 name as somebody you could consult with, and before you
19 can call him he called you. Do I have that correct?

20 MR. TRAVERSO: Objection; misstates the
21 testimony. It's compound. It's also argumentative and
22 mischaracterizes the witness's testimony.

23 MR. MALCOLM: Object to the form.

24 Q. (BY MR. BERNSTEIN) Do I have the understanding
25 correct?

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1 MR. TRAVERSO: Same objections.

2 MR. BERNSTEIN: That's fine.

3 Q. (BY MR. BERNSTEIN) I'm just trying to get the
4 timing sequence.

5 MR. TRAVERSO: No, you're trying to do a lot more
6 than that, Counsel. So my objections to the question
7 have been noted.

8 MR. BERNSTEIN: They have.

9 MR. MALCOLM: Lloyd, for starters, you might want
10 to take that exhibit off. There's a little one inch
11 face of you, so it's a little hard for anybody to
12 concentrate on what you're saying.

13 Q. (BY MR. BERNSTEIN) Trying to get the timing of
14 when you first got contacted by Mr. Malcolm. Okay.

15 As I understand it, you had a phone conversation
16 with Mr. Traverso following receipt of Exhibit 1, the
17 August 26, 2020 letter, correct?

18 A. Yeah.

19 Q. In that phone conversation with Mr. Traverso
20 following receipt of Exhibit 1, he indicated to you that
21 Mr. Malcolm is an attorney that you could seek counsel
22 from to assist you. Do I understand that correctly?

23 A. Yes.

24 Q. And then do I understand that Mr. Malcolm
25 contacted you before you contacted him?

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1 A. Yes.

2 MR. MALCOLM: Again, objection to the form on
3 that question as well.

4 Q. (BY MR. BERNSTEIN) Did Mr. Traverso recommend
5 any other lawyers to you --

6 MR. MALCOLM: Objection; argumentative.

7 Q. (BY MR. BERNSTEIN) -- in that first
8 conversation?

9 MR. TRAVERSO: Objection; argumentative;
10 misstates the witness's testimony.

11 MR. BERNSTEIN: I'm asking him if he did.

12 MR. TRAVERSO: No, you're not. Your question
13 just assumed a fact that's not in evidence, which if
14 you'd let me finish my objection I'll make. So I'll
15 start over. The objections are argumentative; it
16 assumes facts not in evidence; mischaracterizes the
17 witness's testimony; and assumes facts -- I guess I
18 already said that, misstates the witness's testimony.
19 Now you can answer.

20 Q. (BY MR. BERNSTEIN) Did he ever suggest any other
21 lawyers to you other than Mr. Malcolm?

22 A. No, nobody else.

23 THE WITNESS: Can I have a break? I want to use
24 the restroom.

25 (Recess taken.)

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1 Q. (BY MR. BERNSTEIN) Do you recall, Mr. Miguel,
2 approximately how long your first conversation with Mr.
3 Traverso was, how much time you spent with him on the
4 phone?

5 A. No. I don't remember how long it was.

6 Q. After having your phone conversation with Mr.
7 Traverso prior to Mr. Malcolm calling you, did you
8 contact Sears about the situation?

9 A. I don't remember at that time. But just to
10 clarify that, I could have called Mal -- Sean Malcolm at
11 that time or either left the message and he called me
12 back, just to clarify that. But other than that, I
13 don't remember if I did call back because I wasn't
14 working with Sears at that time and the last
15 conversation that I had was with Brad Clever and he kind
16 of like dish me on the side. He just tried getting me
17 back to work for Sears, which I denied.

18 Q. Did Mr. Traverso provide you with a contact
19 number for Mr. Malcolm?

20 A. I don't recall on that if I -- again, I maybe
21 called him and left a message and he called me.

22 Q. I'm wondering if Mr. Traverso gave you the number
23 to call or did you look it up yourself?

24 A. I did not look it up. I just was -- I don't
25 remember at that time.

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1 Q. Did you speak with any other lawyers relative to
2 this lawsuit or Mr. Traverso's August 20 letter, Exhibit
3 1?

4 A. No.

5 Q. Have you signed an agreement with Mr. Malcolm for
6 him to be your lawyer?

7 A. Yes.

8 Q. Do you know when that agreement was signed?

9 A. Don't remember.

10 Q. Would it have been soon after that first phone
11 call with him?

12 A. Probably after that, yeah.

13 (Deposition Exhibit No. 2 was marked for
14 identification.)

15 Q. (BY MR. BERNSTEIN) If you could put in front of
16 you of, Exhibit 2, which is a Settlement Agreement With
17 Assignment of Rights and Covenants, and if you go to the
18 last page, it is an agreement signed October 9, 2020?

19 A. The last page?

20 Q. Yeah. If you look at the last page, there's
21 signature dates for you and all the lawyers and
22 everybody else dated October 9, 2020.

23 A. Yeah.

24 Q. Do you have that one in front of you?

25 A. Yes, sir.

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1 Q. Is that your signature on the last page on top of
2 the Edwin Miguel signature line?

3 A. Yes.

4 Q. At any time prior to signing the settlement
5 agreement, were you ever provided with a copy of the ACE
6 Insurance policy for Sears?

7 A. No. But, again, I was already not working for
8 Sears, so I had no info or anything about it.

9 Q. And prior to signing the settlement agreement,
10 did you have any conversations with anyone at ACE about
11 the lawsuit against you?

12 MR. TRAVERSO: Objection; lack of foundation,
13 personal knowledge.

14 A. No.

15 MR. BERNSTEIN: He doesn't have personal
16 knowledge to tell me if he had any conversations?

17 MR. TRAVERSO: No. Your question was compound
18 too, so I'll object to it on that basis. But if you
19 think about why it's compound, you'll understand why it
20 was lacking foundation.

21 Q. (BY MR. BERNSTEIN) Did you have any
22 conversations with anyone at ACE prior to signing the
23 settlement agreement?

24 A. No.

25 MR. TRAVERSO: Objection. Same objections and

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1 asked and answered. I guess at this point I need to
2 move to strike as being redundant. It's already been
3 asked and answered.

4 Q. (BY MR. BERNSTEIN) Was it your understanding
5 that you were agreeing to settle the matter with Ms.
6 Hawkins for the amount of the default judgment that Mr.
7 Traverso talked to you about, \$443,000 plus?

8 MR. MALCOLM: Object to the form.

9 A. It was to a point where what I signed here so
10 then I don't get penalized for this amount.

11 Q. (BY MR. BERNSTEIN) The amount of the default
12 judgment for 443,000?

13 A. Yes.

14 Q. If you'll turn to page 6 of Exhibit 2, or it's
15 got a Bates stamp that says Miguel 00077 --

16 A. Yeah.

17 Q. -- the section Purpose of the Settlement, do you
18 see that?

19 A. Yes.

20 Q. And if you come down to the bottom starting at
21 line 24, do you see how it has line numbers on the side?

22 A. Yes.

23 Q. It reads "Defendant Miguel further acknowledges
24 and warrants that to his knowledge the insurer has not
25 denied coverage but has fully accepted coverage of

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1 plaintiff's claims." Do you see that?

2 A. Yes.

3 Q. From whom did you get that knowledge?

4 A. This knowledge was from the paper that I got from
5 my attorney.

6 Q. Was it your understanding that in signing this
7 paperwork Ms. Hawkins agreed not to enforce the 443,000
8 judgment she had against you?

9 MR. TRAVERSO: Object; calls for a legal
10 conclusion.

11 MR. BERNSTEIN: I'm asking his understanding.

12 MR. TRAVERSO: Same objection.

13 A. Yes.

14 Q. (BY MR. BERNSTEIN) And was it also your
15 understanding that by signing this settlement agreement
16 Ms. Hawkins agreed not to pursue collection of that
17 against your personal assets?

18 MR. TRAVERSO: Object; legal conclusion.

19 A. Yes.

20 Q. (BY MR. BERNSTEIN) And was it also your
21 understanding that by signing the settlement agreement
22 Ms. Hawkins agreed not to continue to pursue the
23 litigation against you?

24 MR. TRAVERSO: Object; calls for a legal
25 conclusion.

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1 A. Yes.

2 Q. (BY MR. BERNSTEIN) Is that your understanding?

3 A. Yes.

4 Q. Was it your understanding that by signing this
5 agreement all the claims Ms. Hawkins were bringing
6 against you were now resolved?

7 MR. TRAVERSO: Object; calls for a legal
8 conclusion and vague.

9 MR. MALCOLM: Object to the form.

10 A. I don't -- what was that? I don't understand.

11 Q. (BY MR. BERNSTEIN) Sure. Was it your
12 understanding by signing this settlement agreement, all
13 of Ms. Hawkins's claims against you were now resolved?

14 MR. TRAVERSO: Same objections.

15 MR. MALCOLM: Object to the form.

16 A. Yes.

17 Q. (BY MR. BERNSTEIN) If you turn to page 9 of the
18 agreement, under the Information to Be Provided section,
19 do you see that?

20 A. Yes.

21 Q. It says, "Upon request by Plaintiff, Defendant
22 Miguel shall provide declaration under oath stating
23 details of his contacts with the insurer and the
24 employer following the collision." Did you ever provide
25 such a declaration to your knowledge?

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1 A. Not -- not to anyone, no. To my Sears?

2 Q. To anyone.

3 A. No, not that I know of. Remember on this --
4 (Deposition Exhibit No. 3 was marked for
5 identification.)

6 Q. (BY MR. BERNSTEIN) You can grab the next
7 exhibit, which is Settlement Agreement with Assignment
8 of Rights and Covenants, and this is the one that has a
9 date next to your signature line of 6/23/21. You see
10 that?

11 A. Yes.

12 Q. Mr. Miguel, after signing Exhibit 2, the prior
13 exhibit, did you ever provide a copy of it to Sears?

14 MR. MALCOLM: Object to the form.

15 A. No. Again, I wasn't -- I wasn't working for
16 them.

17 Q. (BY MR. BERNSTEIN) And looking at Exhibit 3,
18 that last page dated 6/23/21, the signature line for
19 Edwin Miguel, is that your signature?

20 A. Yes.

21 Q. What's your understanding as to why a new
22 settlement agreement was being proposed?

23 MR. TRAVERSO: Objection; vague; calls for
24 speculation; lacks foundation.

25 MR. MALCOLM: Object to the form. Also object to

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1 the extent that you're seeking information that's
2 protected by the attorney-client privilege and the work
3 product doctrine. You can answer with respect to
4 anything that's not related to any communications
5 between you and I, if you remember.

6 A. Pertaining to this, I've been stressed a lot with
7 all this so -- there's so much things that's going on in
8 my life that just looking at this again is making me
9 stressful and I don't know what to say. I mean --

10 Q. (BY MR. BERNSTEIN) Okay. You signed a
11 settlement agreement back in October 9, 2020, Exhibit 2?

12 A. Yeah.

13 Q. What was your understanding as to why you were
14 being asked to sign a new settlement agreement with Ms.
15 Hawkins?

16 MR. TRAVERSO: Same objections. And it's been
17 asked and answered.

18 MR. MALCOLM: Same objections.

19 A. Well, the thing is that nobody had represent me
20 besides my lawyer, nobody had help -- I was abandoned,
21 let's just put it that way. Nobody -- the company that
22 I worked for was supposed to deal with all of this. I
23 mean, I'm just so stressed. I mean, in life with having
24 this upon me and embarrassment of what I did -- I know I
25 did wrong. But, again, you know, I mean, in my life, I

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1 mean, I got to deal with this, and every day it is --
2 especially now that we're back thinking about this and
3 going back is like it's starting all over again. I get
4 this swing moods, so you understand the way how I feel.

5 Q. (BY MR. BERNSTEIN) Okay. And I appreciate that
6 and I apologize if I'm making you re-live it all, but
7 I'm trying to understand. You signed a settlement
8 agreement back in October of 2020 and it was your
9 understanding that that ended your dispute, the lawsuit
10 with Ms. Hawkins?

11 MR. TRAVERSO: Objection; misstates the
12 testimony.

13 Q. (BY MR. BERNSTEIN) Now I'm trying to understand
14 why you are signing a new settlement agreement in June
15 2021?

16 MR. TRAVERSO: Objection; misstates the testimony
17 and there's no question before the witness.

18 MR. MALCOLM: Object to form.

19 MR. BERNSTEIN: There is a question.

20 A. Well, again, I mean, my life. I mean, for what I
21 go through in my life, it's going downhill. So it's --
22 it ruins my credit and everything financially. I'm --
23 I'm -- I look back at this, I mean, it's -- it's like
24 it's on me. I mean, I'm not in -- I'm getting old and
25 I'm getting in probably worse health because of all

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1 these things that happening to me presuming in stress,
2 so.

3 Q. (BY MR. BERNSTEIN) How is this -- how is it
4 impacting your credit?

5 A. What -- what I went through, meaning with my job
6 that I had and people just abandon me, you know, with
7 everything.

8 Q. Who abandoned you?

9 A. Sears, the insurance.

10 Q. Okay. So am I understanding you correctly that
11 the reason why you signed a new settlement agreement in
12 '21 was because you were upset with Sears and the
13 insurance company for not taking care of you?

14 MR. TRAVERSO: Objection; misstates the
15 testimony; argumentative.

16 A. It's not just upset. I mean, it's both upset and
17 stressful. I mean, put yourself in my shoe, you know, I
18 have a family that I take care of. I have a mother back
19 home that I go to, and it's -- it's hard to have this
20 thing lingering me and financially going up and down.
21 Even with my new job, I just got back, you know, with
22 that new job.

23 Q. (BY MR. BERNSTEIN) And I understand that. But
24 in October of 2020 you had signed an agreement that had
25 brought an end to Ms. Hawkins's claims against you.

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1 MR. TRAVERSO: Objection; argumentative.

2 Q. (BY MR. BERNSTEIN) Right?

3 MR. TRAVERSO: Misstates the testimony.

4 A. But, again, you got to understand what I'm going
5 through right now. Again, I have to get people to
6 support me here and do this. I mean, nothing's free.

7 Q. (BY MR. BERNSTEIN) So the settlement agreement
8 you signed in October of 2020 was for the amount of the
9 default judgment of \$443,000. Exhibit 3, the settlement
10 agreement in June of 2021 is for a million-five. Do you
11 see that?

12 MR. TRAVERSO: Objection; vague. And the
13 documents speak for themselves.

14 Q. (MR. BERNSTEIN) What's your understanding as to
15 why now you're signing a settlement agreement in June of
16 '21 for a \$1,500,000 as opposed to the 443,000 and
17 change you signed back in October of 2020?

18 MR. MALCOLM: Object to the form to the extent
19 the question asks for attorney-client privileged
20 communications. You can answer if you know other than
21 anything that you and I discussed.

22 A. I -- I mean, this is -- it's a lot of stress. I
23 mean, financially, again, I mean, losses in here going
24 through this. I mean, I just got back to work. I mean,
25 I can lose track, my health issue is bad pertaining to

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1 all of this. I mean, I'm coming back to this again and
2 I'm already stressed out trying to answer this to you.

3 Q. (BY MR. BERNSTEIN) Is it your understanding that
4 some part of the million-five that's agreed to in
5 Exhibit 3 you get compensated for, you get a piece of if
6 it's recovered from the insurance company?

7 MR. TRAVERSO: Objection; argumentative;
8 compound.

9 MR. MALCOLM: Object to the form. Answer if you
10 know.

11 A. It's what this document says, yeah. I mean, I'm
12 part of this where I'm, again, I mean, I'm going through
13 this day by day. My health issue. I mean, it's a lot
14 of stress of this if you look at it. I mean, I don't
15 have this kind of payments that I have to try and, you
16 know, pay off, no.

17 Q. (BY MR. BERNSTEIN) What payments do you have to
18 try to pay off?

19 A. I mean, with this judgment and all that stuff
20 that, you know, that subpoena came up to me. I'm just
21 totally stress. I mean, it affected my life, I can tell
22 you that. My life, my family life.

23 Q. Okay.

24 A. It's been pain and suffering.

25 Q. I understand that. But I'm trying to understand

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1 why you signed a separate -- a second settlement
2 agreement with Ms. Hawkins for a million-five. Is it
3 your understanding that you get some of that
4 million-five if it's recovered?

5 A. I can't even think. I need something to drink,
6 water, more water.

7 MR. MALCOLM: Okay. He wants to take a break.

8 MR. BERNSTEIN: That's fine.

9 (Recess taken.)

10 Q. (BY MR. BERNSTEIN) Is it your understanding that
11 you are obligated by either of these agreements to pay
12 Ms. Hawkins any money?

13 MR. TRAVERSO: Objection; vague; calls for a
14 legal conclusion.

15 MR. MALCOLM: Object to the form.

16 A. If I'm seeing this, yeah, but I don't recall. I
17 have -- I have to, you know, talk to my lawyer about it.

18 Q. (BY MR. BERNSTEIN) And do you have an
19 understanding as to why the first settlement agreement
20 in the amount of 443,000 was later changed to a second
21 settlement agreement in the amount of 1,500,000 relative
22 to Ms. Hawkins's damages?

23 MR. TRAVERSO: Objection; argumentative and
24 misstates the documents.

25 A. This is between my lawyer and I. I don't recall

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1 anything.

2 Q. (BY MR. BERNSTEIN) Other than conversations
3 you've had with your lawyer, and I don't want to hear
4 about those, you have no independent understanding as to
5 why you were asked to sign a second settlement
6 agreement?

7 MR. MALCOLM: Object to the form.

8 A. This is, again, with my lawyer.

9 Q. (BY MR. BERNSTEIN) And do you have an
10 understanding as to whether or not you will recover any
11 amount of money in this lawsuit against ACE Insurance?

12 MR. TRAVERSO: Objection; it calls for a legal
13 conclusion.

14 A. Again, it's with my lawyer.

15 Q. (BY MR. BERNSTEIN) And is it your understanding
16 that the reason why you signed a second settlement
17 agreement that went from the 443 to a million-five was
18 so that you could recover your own damages against the
19 insurance company?

20 MR. TRAVERSO: Objection; assumes facts not in
21 evidence; mischaracterizes the witness's testimony; and
22 it's argumentative.

23 MR. MALCOLM: Object to the form and object to
24 the extent that you're seeking attorney-client
25 privileged communications and instruct him not to answer

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1 based on that. If there's anything that you can answer
2 that's not based on our communication, you can answer.

3 A. Not that I recall, no.

4 Q. (BY MR. BERNSTEIN) In this lawsuit you are
5 claiming that you have sustained emotional distress as a
6 result of Sears and the insurance company not taking
7 care of you. Do I understand that correctly?

8 A. Yes.

9 MR. TRAVERSO: Objection; legal conclusion.

10 Q. (BY MR. BERNSTEIN) Have you gone to see any
11 doctors with respect to the emotional distress you claim
12 you're experiencing?

13 A. No. I just move on with my life and try to
14 survive. It's embarrassing moment for me to go out and
15 seek help like that. So the ones I speak to is my
16 family and my lawyer.

17 Q. No outside counseling or therapist?

18 A. Friends.

19 Q. But no outside counseling or therapist?

20 MR. MALCOLM: Object to the form; asked and
21 answered.

22 A. No.

23 Q. (BY MR. BERNSTEIN) Have you had to pay your
24 lawyer any out-of-pocket expenses as a result of Ms.
25 Hawkins's lawsuit against you?

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1 A. This, again, is between me and my lawyer.

2 Q. I'm just asking you if you've paid him anything?

3 A. No, at this time.

4 Q. You testified earlier that you believe this has
5 damaged your credit. Have you run any credit reports?

6 A. Oh, definitely, yes.

7 Q. And how -- what's your understanding as to how
8 it's impacted your credit?

9 A. It's going down and also I'm about to file BK.
10 So it's affected me a lot.

11 Q. And is it your testimony that you're about to
12 file bankruptcy because of Ms. Hawkins's lawsuit against
13 you?

14 A. No. It's -- it's all being stressed out, life,
15 surviving. I live paycheck to paycheck. My family's
16 first, then me.

17 Q. Am I understanding that your financial situation
18 that you're currently in is causing you daily stress?

19 A. Yes.

20 Q. And I just want to make sure I'm clear. You're
21 not testifying that you're filing for bankruptcy because
22 of this lawsuit by Ms. Hawkins against you?

23 MR. MALCOLM: Object to the form.

24 A. It's -- it's something that I'm looking into. I
25 have not filed yet, but it's to a point with all this

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1 stress upon me, yes.

2 Q. (BY MR. BERNSTEIN) Okay. You keep saying all
3 this stress upon you. Are you continually stressed?
4 Prior to coming to today's deposition, have you been
5 stressed about Ms. Hawkins's lawsuit against you?

6 A. Yes. Definitely, yes. Every time I look at this
7 paper, I'm already stressed out.

8 Q. But prior to coming to the deposition here today,
9 when was the last time you looked at anything relative
10 to Ms. Hawkins's lawsuit against you?

11 A. Once in a while here I see it. I mean, I'm
12 looking back. I mean, it's in front of me. I mean,
13 it's a bother. I mean, every day. I mean, I have it at
14 home. I put it away at home. But, again, it's there in
15 my drawer. I mean, it's bothering me every day.

16 Q. And you understand as a result of the settlement
17 agreement, Ms. Hawkins cannot collect the million-five
18 from you, correct?

19 A. Yes.

20 (Deposition Exhibit No. 4 was marked for
21 identification.)

22 Q. (BY MR. BERNSTEIN) If you can grab the last
23 exhibit, Exhibit 4, which is Defendant Edwin Miguel's
24 Responses to Defendant ACE American Insurance Company's
25 First Requests for Production. Do you have that

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1 pleading in front of you?

2 A. Yes.

3 Q. Have you seen this document before?

4 A. I don't recall this. Did I sign this?

5 Q. I'm sorry?

6 A. Oh, yeah, yeah, yeah, yeah.

7 Q. Have you seen this document before?

8 A. Yes.

9 Q. If you'll turn to page 5, there is -- at the top
10 it says request for production No. 3, all documents
11 relating to any communications between you and Sears
12 relating to the accident. Do you see that?

13 A. Yeah.

14 Q. And then you'll see response, and then the last
15 sentence says "most of my communications with Sears were
16 verbal."

17 A. That's correct.

18 Q. Did you ever take any notes of your conversations
19 with Sears?

20 A. No.

21 Q. Did you ever e-mail folks at Sears?

22 A. No. Because, again, I -- I haven't been working
23 for them since then.

24 Q. Okay. I'm just --

25 A. And, no, I don't have no -- any other contacts to

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1 get ahold of them.

2 Q. You said at some point Brad had called you about
3 following up about trying to bring you back?

4 A. It wasn't Brad. It was Aaron, and that's the
5 last --

6 Q. Sorry.

7 A. That was the last communication that I had with
8 him. And I brought it up and then he just dished me out
9 because all he called me for was try to get me back to
10 work for Sears. And then he said "I have nothing to do
11 with that."

12 Q. Did you ask him who at Sears you may be able to
13 contact about the lawsuit and what was happening?

14 A. All he said was HR and you can speak with HR and
15 I didn't have that number at that time already.

16 Q. Did you ask him for the number?

17 A. No, he wouldn't give me -- he just said no and
18 hung up because I wouldn't go back to work for them.

19 Q. Did you text message with anybody at Sears
20 relative to this lawsuit?

21 A. No.

22 Q. Did you provide your counsel with any documents
23 in response to this request from ACE for documentation?

24 A. No documents. I did not have any documents from
25 the insurance or anybody from Sears. Again, I was

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1 abandoned.

2 Q. Did you provide any mail -- excuse me. Did you
3 provide Mr. Malcolm any documents with respect to
4 responding to this request for production or relative to
5 this lawsuit?

6 A. No. For the record, I did not even know who the
7 insurance company was at, if you're pertaining to these
8 documents in front of me. I did not know even know who
9 ACE American Insurance was.

10 MR. BERNSTEIN: I'm going to take a quick break,
11 just look at my notes and see if there's anything else
12 to follow up on and we'll finish up. Give me five
13 minutes, please.

14 (Recess taken.)

15 Q. (BY MR. BERNSTEIN) Mr. Miguel, do you believe
16 that Ms. Hawkins is entitled to 1.5 million for the
17 injuries she sustained in the accident you were involved
18 in on November 16?

19 MR. MALCOLM: Object to the form.

20 A. I really don't know.

21 MR. BERNSTEIN: I have no further questions at
22 this time. I'm going to reserve my right pending any
23 further supplemental discovery from the case or Mr.
24 Malcolm. I'd also Betsy if we could get this transcript
25 turned around on an expedited basis and I would work

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1 with you on what that entails and the cost.

2 MR. TRAVERSO: No questions.

3 MR. MALCOLM: Reserve.

4 (Deposition concluded at 4:45 p.m.)

5 (Signature was reserved.)

6 * * * * *

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REPORTER'S CERTIFICATE

I, BETSY E. DECATER, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify that the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that a review of which was requested; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND and DIGITAL SIGNATURE this 18th day of September, 2022.



BETSY E. DECATER, RPR
Washington Certified Court Reporter, CCR 3109

SEAN B. MALCOLM, ESQ.

sean@kirklandtriallawyer.com

September 18, 2022

RE: HAWKINS VS. ACE AMERICAN INSURANCE

SEPTEMBER 16, 2022, EDWIN MIGUEL (5431264)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at calendar-pnw@veritext.com

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

1 HAWKINS VS. ACE AMERICAN INSURANCE
2 EDWIN MIGUEL (5431264)
3 E R R A T A S H E E T
4 PAGE_____ LINE_____ CHANGE_____
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21 REASON_____
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23 _____
24 WITNESS _____ Date _____
25

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1 HAWKINS VS. ACE AMERICAN INSURANCE
2 EDWIN MIGUEL (5431264)
3 ACKNOWLEDGEMENT OF DEPONENT
4 I, EDWIN MIGUEL, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.
10 _____
11 _____
12 EDWIN MIGUEL _____ Date _____
13 *If notary is required
14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.
16 _____
17 _____
18 _____
19 NOTARY PUBLIC
20 _____
21 _____
22 _____
23 _____
24 _____
25

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[00077 - acknowledgement]

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Washington State Court Rules
Rule CR 30
Depositions Upon Oral Examination

(e) Submission to Witness; Changes; Signing.
When the testimony is fully transcribed the deposition shall be submitted to the witness for Examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in Form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the Witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness Is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the Officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign Together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under

Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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